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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KHACHIK GALAJIAN,

11 Plaintiff,

12 v.

13 JONATHAN BEARD, et al.,

14 Defendants.

CASE NO. C15-0955JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court are two motions by Plaintiff Khachik Galajian: a motion to
17 amend his complaint (Amendment Mot. (Dkt. # 24)) and a motion to extend discovery
18 deadlines and take additional depositions (Discovery Mot. (Dkt. # 27)). Defendants
19 Jonathan Beard, Jane Doe Beard, John T. Petrie, Jane Doe Petrie, and South Correctional
20 Entity Multijurisdictional Misdemeanor Jail (“SCORE”) (collectively, “Defendants”)
21 oppose both motions. (Amendment Resp. (Dkt. # 30); Discovery Resp. (Dkt. # 32).)

1 Having considered the submissions of the parties,¹ the appropriate portions of the record,
 2 and the relevant law, the court GRANTS Mr. Galajian's motion to amend and DENIES
 3 without prejudice Mr. Galajian's motion to extend discovery deadlines and take
 4 additional depositions, as more fully detailed herein.

5 II. MOTION TO AMEND

6 In his operative complaint, Mr. Galajian sues Mr. Beard, Mr. Petrie, and SCORE
 7 for an alleged physical assault that occurred when officers booked Mr. Galajian at
 8 SCORE on the night of February 8, 2014, and the early morning of February 9, 2014.
 9 (Am. Compl. (Dkt. # 11) ¶¶ 1.2-1.4, 3.1-3.7.) Mr. Galajian also names Mr. Beard's wife
 10 under the fictitious name Jane Doe Beard and Mr. Petrie's wife under the fictitious name
 11 Jane Doe Petrie. (*Id.* ¶¶ 1.2-1.3.) Mr. Galajian asserts a Section 1983 claim and tort
 12 claims for assault and battery, intentional and negligent infliction of emotional distress,
 13 and negligence. (*Id.* ¶¶ 4.1-8.4.)

14 Mr. Galajian seeks leave to amend his complaint to clarify the basis of his Section
 15 1983 claim against SCORE and replace fictional defendants Jane Doe Beard and Jane
 16 Doe Petrie with those defendants' actual names. (Amendment Mot. at 1.) The deadline
 17 for amended pleadings in this case is September 28, 2016. (Sched. Order (Dkt. # 16) at
 18 1.) Accordingly, the court is to "freely give leave" to amend "when justice so requires."
 19 Fed. R. Civ. P. 15(a)(2). "In the absence of any apparent or declared reason—such as
 20 undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to

21
 22 ¹ No party requested oral argument on either motion, and the court concludes it is
 unnecessary to the disposition of these motions. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 cure deficiencies by amendments previously allowed, undue prejudice to the opposing
 2 party by virtue of allowance of the amendment, futility of amendment, etc.—the leave
 3 sought should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178,
 4 182 (1962).

5 Defendants mount two arguments in opposition to granting leave to amend. First,
 6 Defendants argue that Mr. Galajian was “[n]ot [d]iligent” in disclosing his theory of
 7 liability under Section 1983. (Amendment Resp. at 3.) Mr. Galajian timely moved to
 8 amend his complaint to name the fictional defendants (*see* Rev. Prop. Order (Dkt. # 26-1)
 9 Ex. A (“Prop. 2d Am. Compl.”) ¶¶ 1.2-1.3) and to clarify his theory of liability against
 10 SCORE under *Monell v. Department of Social Services*, 436 U.S. 658 (1978) (*id.*
 11 ¶¶ 1.5-1.6, 3.6-3.7). Mr. Galajian obtained the information relevant to the proposed
 12 amended complaint during a July 12, 2016, deposition of Captain Robert Ellis. (Jin Decl.
 13 (Dkt. # 25) ¶ 3, Ex. B.) Contrary to Defendants’ argument, the court does not find that
 14 the “roughly two months” that elapsed between Captain Ellis’s deposition and Mr.
 15 Galajian’s motion to amend constitutes undue delay or severely prejudices defendants.
 16 (Amendment Resp. at 4.)

17 Defendants next contend that amendment would require modifying the scheduling
 18 order, and that Mr. Galajian must therefore demonstrate “good cause.” (*Id.*) Defendants
 19 base this argument entirely on the premise that Mr. Galajian’s August 26, 2016,
 20 discovery requests are overbroad and unduly burdensome. (*Id.* at 4-5 (“Plaintiff’s newly
 21 ‘clarified’ theory would place at [sic] exceptional burden on SCORE based on the
 22 discovery [Mr. Galajian] has requested in order to prove his theory.”).) Accordingly,

1 Defendants argue that the court will “need[] to resolve disagreements regarding the scope
2 of records sought” and Defendants would “possibly exceed[] the current discovery
3 deadline” and require “modification of the dispositive motion deadline and possibly the
4 trial itself.” (*Id.* at 5.) Defendants have not moved for a protective order or otherwise
5 enlisted the court’s authority to adjudicate the appropriate scope of discovery. (*See* Dkt.)
6 The court thus concludes that Defendants’ arguments regarding the scope of discovery
7 are conjectural and of minimal relevance to Mr. Galajian’s motion to amend.

8 Based on the foregoing analysis, the court grants Mr. Galajian’s motion to amend
9 and orders Mr. Galajian to file his amended complaint² within seven (7) days of the date
10 of this order.

11 III. DISCOVERY MOTION

12 Mr. Galajian also asks the court to grant him leave to take additional depositions
13 and extend the expert disclosure deadline, the discovery motion deadline, and the
14 discovery cutoff “by one month.” (Discovery Mot. at 12; *see also* Discovery Reply (Dkt.
15 # 36) at 2.)

16 A. Additional Depositions

17 To date, Mr. Galajian has deposed five people: (1) Corrections Officer Barnett,
18 who “drafted a narrative statement of the incident over a year after it occurred”; (2)
19 Captain Robert Ellis, who Defendants identified as the “reviewing supervisory officer”
20 on the night in question; (3) Mr. Petrie, one of the defendants; (4) Mr. Beard, one of the

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22 ² Mr. Galajian may not alter his proposed amended complaint (*see* Dkt. # 26-1 at 4-12)
except to accept the redlined changes indicated in that document.

1 defendants; and (5) Sergeant Pedro Santos, Jr., Mr. Petrie's and Mr. Beard's "immediate
2 supervisor." (Russ Decl. (Dkt. # 28) ¶ 18.) Mr. Galajian seeks leave to depose seven
3 other fact witnesses: (6) Corrections Officer Kenyon, the only non-party witness to the
4 incident; (7) Matt Thompson, an emergency medical technician ("EMT") who
5 "performed a medical check" on Mr. Galajian after the incident; (8) Jeannette Jones, an
6 EMT who "performed a booking medical screen" on Mr. Galajian after the incident; (9)
7 Alicia Hankins, a nurse who examined Mr. Galajian for his complaints of rib pain; (10)
8 Elizabeth Render, a physician's assistant who "provided care to [Mr. Galajian] while he
9 was in jail"; (11) a 30(b)(6) designee from SCORE to testify "regarding the use of force
10 reporting, documentation, investigation, and review process used by SCORE"; and (12)
11 Corrections Officer Deer (now Petrie), who "directly witnessed the end of the assault"
12 and is a defendant to this suit as Corrections Officer Petrie's wife. (*Id.* ¶ 19.) Mr.
13 Galajian seeks the court's leave to depose these 12 fact witnesses in addition to
14 Defendants' to-be-named experts. (Discovery Mot. at 9.)

15 Federal Rule of Civil Procedure 30 requires agreement between the parties or
16 leave of the court to take more than 10 depositions. Fed. R. Civ. P. 30(a)(2)(A)(i); *see*
17 *also* Fed. R. Civ. P. 26(b)(2)(A) ("By order, the court may alter the limits in these rules
18 on the number of depositions . . . under Rule 30."). "A party seeking to exceed the
19 presumptive limit bears the burden of making a 'particularized showing' of the need for
20 additional depositions." *Thykkuttathil v. Keese*, 294 F.R.D. 601, 603 (W.D. Wash. 2013).
21 To make such a showing, a party must show not only that the additional depositions are
22

warranted, but also that the depositions the party has already taken were warranted.³

Furthermore, a party “should ordinarily exhaust [its] allowed number of depositions before making a request for additional.” *Thykkuttathil v. Keese*, 294 F.R.D. 597, 600 (W.D. Wash. 2013); *Smith v. Ardew Wood Prods., Ltd.*, No. C07-5641FDB, 2008 WL 4837216, at *1 (W.D. Wash. Nov. 6, 2008) (“Rule 30(a)(2)(A) clearly contemplates that a party has already taken ten depositions before a motion is filed seeking leave of court for a proposed deposition that would result in more than ten depositions being taken under this rule.”).

Mr. Galajian has not yet exhausted his 10 depositions. (Russ Decl. ¶ 18.)

10 Furthermore, Mr. Galajian makes no showing why less expensive and less burdensome
11 means of discovery are unavailable or insufficient. *See* Fed. R. Civ. P. 30(a)(2)
12 (incorporating the limitations imposed in Rules 26(b)(1) and (2)); Fed. R. Civ. P. 30
13 advisory committee’s notes to 1993 amendment (“One aim of this revision is to assure
14 judicial review under the standards stated in Rule 26(b)(2) before any side will be
15 allowed to take more than ten depositions in a case without agreement of the other
16 parties.”), 2015 amendment (“Rule 30 is amended . . . to reflect the recognition of
17 proportionality in Rule 26(b)(1).”). Finally, Mr. Galajian makes no attempt to

³ Allowing additional depositions without analyzing the need for the first 10 depositions would reward a party for taking superfluous depositions early in the course of discovery. See Fed. R. Civ. P. 30; *see also* Fed. R. Civ. P. 26(b). This result would not be “consistent with Rule 26(b)(1),” which applies a proportionality limitation on the scope of discovery. Fed. R. Civ. P. 30 (citing Fed. R. Civ. P. 26(b)(1)).

1 demonstrate the need for the depositions that he has already performed.⁴ (See Discovery
2 Mot. at 10-11.) The court will not grant a request for additional depositions—even if
3 those depositions are needed—if Mr. Galajian does not also demonstrate the need for the
4 depositions he has already taken. *See supra* n.3.

5 Based on the foregoing analysis, the court denies Mr. Galajian’s request to take
6 additional depositions without prejudice to seeking that relief at a later date. Should Mr.
7 Galajian seek such relief, he must make a particularized showing of the need for all of his
8 depositions—not just those he has not yet taken—and explain how each deposition
9 satisfies Rule 26 and Rule 30. Finally, before filing any such motion, the parties must
10 meet and confer and attempt to resolve any dispute.

11 **B. Extension of the Discovery Deadline**

12 Mr. Galajian also argues that good cause exists to extend by one month the expert
13 disclosure deadline, which is currently set for September 28, 2016, the discovery motions
14 deadline, which is currently set for October 28, 2016, and the discovery deadline, which
15 is currently set for November 28, 2016. (See Discovery Mot.; Discovery Reply; Sched.
16 Order at 1.) Mr. Galajian argues that despite “diligently pursu[ing] discovery in this
17 matter, circumstances outside of his control have delayed conducting depositions.” (Mot.
18 at 11.)

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21 ⁴ For instance, the first deposition that Mr. Galajian took is of Corrections Officer
22 Barnett. (Jin Decl. ¶ 18.) The only relevance to the case that Mr. Galajian identifies is that
Officer Barnett “drafted a narrative statement of the event over a year after it occurred.” (*Id.*)

1 Mr. Galajian's account of the progression of discovery in this case is largely
 2 uncontroverted. (See Discovery Mot. at 2-9.) That chronology demonstrates fault on the
 3 part of both parties. Mr. Galajian filed this case in May 2015 but did not "first contact[]
 4 Defendants' counsel regarding setting dates for an inspection of the SCORE jail and for
 5 depositions" until March 2016. (Mot. at 3-4; Russ Decl. ¶ 5.) This 10-month period of
 6 inaction undermines Mr. Galajian's argument that Defendants bear responsibility for the
 7 state of discovery. On the other hand, Defendants contributed to the delays in Mr.
 8 Galajian's subsequent efforts to schedule depositions. (See, e.g., Russ Decl. ¶¶ 6-7,
 9 11-15.)

10 In light of the shared blame for the condensed remaining discovery timeline, the
 11 court does not find good cause to extend the discovery deadline. (See Sched. Order at 2
 12 ("[F]ailure to complete discovery within the time allowed is not recognized as good
 13 cause.").) Defendants represent that "[t]here is no reason to believe the rest of discovery
 14 cannot be completed prior to November 28, 2016."⁵ (Discovery Resp. at 3.) The court
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17 ⁵ Defendants also indicate that they intend to ask the court to limit the scope of discovery,
 18 and that depending on the court's ruling, Defendants may "exceed[] the current discovery
 19 deadline" and "require . . . modification of the dispositive motion deadline and possibly the trial
 20 itself." (Amendment Resp. at 5); *see also supra* § II. The scheduling order sets "firm dates that
 21 can be changed only [by] order of the court." (Sched. Order at 2.) "The court will alter these
 22 dates only upon good cause shown: failure to complete discovery within the time allowed is not
 recognized as good cause." (*Id.*) Mr. Galajian propounded the discovery requests that
 Defendants contend are overbroad on August 26, 2016. (Chen Decl. (Dkt. # 31) ¶ 3A, Ex. A at
 6-7.) Almost one month later, Defendants have not come to an agreement with Mr. Galajian or
 sought relief from the court regarding the proper scope of these requests. Defendants' delay at
 this late stage in the case renders the court skeptical that Defendants can demonstrate good cause
 to alter the scheduling order.

1 orders Defendants to cooperate in meeting that deadline.⁶ Evidence of further delays or
2 misrepresentations by Defendants may result in sanctions.

3 **IV. CONCLUSION**

4 Based on the foregoing analysis, the court GRANTS Mr. Galajian's motion to
5 amend (Dkt. # 24), ORDERS Mr. Galajian to file his amended complaint within seven
6 (7) days of the date of this order, and DENIES without prejudice Mr. Galajian's motion
7 to extend discovery deadlines and take additional depositions (Dkt. # 27).

8 Dated this 26th day of September, 2016.

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12 JAMES L. ROBART
United States District Judge

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19 ⁶ For instance, Mr. Galajian expresses concern that currently scheduled, early-October
20 depositions necessitate additional written discovery, which would have a due date after the
deadline for discovery motions. (Discovery Reply at 4.) This timeline could "foreclose Mr.
21 Galajian from the ability to enforce or resolve any discovery disputes that then arise." (*Id.*) This
contingency, which could arise in any case, does not constitute "good cause." (Sched. Order at
22 2.) However, the court expects the parties to cooperate in good faith should any like situations
arise.